



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

LEWIS BAILEY,  
Plaintiff,

vs.

JOHN OZMINT, Director  
of the South Carolina  
Department of Corrections, et al.,  
Defendants.

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CIVIL ACTION NO. 4:08-1630-HFF-TER

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ORDER

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This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Defendants' motion for summary judgment (Doc. #30) be granted in its entirety, Plaintiff's motion for summary judgment (Doc.#29) be denied, and any other outstanding motions be deemed moot, or, alternatively, be denied. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on July 27, 2009, but Plaintiff failed to file any objections to the Report. In the absence of such objections, the Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

Nevertheless, since the Report was issued, the Court of Appeals for the Fourth Circuit decided *Smith v. Ozmint*, 2009 WL 2366134 (4th Cir. July 31, 2009). In that action, a South Carolina prisoner brought suit alleging, among other things, that the prison grooming policy violated the Religious Land Use and Institutionalized Persons Act (RLUIPA). *Id.* at \*2. The district court granted summary judgment in favor of the defendants and the prisoner appealed. *Id.*

The Court of Appeals for the Fourth Circuit held, in relevant part, that the grooming prison policy imposed a substantial burden on the prisoner's religious practice pursuant to RLUIPA and that the summary judgment affidavit relied on by the defendants failed to demonstrate that the grooming policy furthered a compelling governmental interest by the least restrictive means. *Id.* at \*5-7.

There appears to be some similarity of the facts and law in *Smith* to the instant action. Accordingly, in an abundance of caution and the interests of justice, before considering a motion for summary judgment in this matter, the Court will require briefing regarding the application of *Smith* to the instant action.

Therefore, after a thorough review of the comprehensive and well-reasoned Report and the record in this case, it is the judgment of the Court that Defendants' motion for summary judgment (Doc. #30) is hereby **DISMISSED** without prejudice and with leave to refile within twenty days of

the filing of this Order, Plaintiff's motion for summary judgment (Doc.#29) is **DISMISSED** without prejudice and with leave to refile within twenty days of the filing of this Order, and any other outstanding motions are **DISMISSED** without prejudice and with leave to refile as deemed necessary.

Consequently, this case is hereby **RECOMMITTED** to the Magistrate Judge for further proceedings consistent with this Order. Such recommitment, of course, is caused by no fault of the Magistrate Judge inasmuch as *Smith* was decided four days after the Report was filed.

**IT IS SO ORDERED.**

Signed this 25th day of August, 2009, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.